

The most current information on how Payroll professionals can avoid legal and procedural pitfalls, in a fast-read format, twice a month.

KEEP UP TO DATE **on** PAYROLL™

November 15, 2023

UPCOMING DEADLINES

Use this checklist to help ensure your deposits of Social Security, Medicare and withheld income taxes are timely remitted to the IRS.

SEMIWEEKLY DEPOSITORS

- **Nov. 15, 2023:** Deposit taxes for payroll on Nov. 8, 9, 10.
- **Nov. 17, 2023:** Deposit taxes for payroll on Nov. 11, 12, 13, 14.
- **Nov. 22, 2023:** Deposit taxes for payroll on Nov. 15, 16, 17.
- **Nov. 27, 2023:** Deposit taxes for payroll on Nov. 18, 19, 20, 21.
- **Nov. 29, 2023:** Deposit taxes for payroll on Nov. 22, 23, 24.
- **Dec. 1, 2023:** Deposit taxes for payroll on Nov. 25, 26, 27, 28.
- **Dec. 6, 2023:** Deposit taxes for payroll on Nov. 29, 30; Dec. 1.
- **Dec. 8, 2023:** Deposit taxes for payroll on Dec. 2, 3, 4, 5.

MONTHLY DEPOSITORS

- **Nov. 15, 2023:** Deposit taxes for payments made during October 2023.
- **Dec. 15, 2023:** Deposit taxes for payments made during November 2023.

ALL EMPLOYERS

- **Jan. 31, 2024:** File Form 941 for Q4. Note: If you properly deposited taxes on time and in full, you have until Feb. 12, 2024, to file.

Heads up: IRS releases 2024 retirement plan numbers

■ Contribution limits increasing, but not by much

It's time to update your payroll systems. The IRS recently announced cost-of-living adjustments affecting retirement plans for 2024.

According to IRS Notice 2023-75, the new 401(k) plan salary deferral limit will be \$23,000.

That same limit will apply for salary deferrals to 403(b) plans and most 457 plans.

That's a mere \$500 increase from the current maximum contribution amount of \$22,500.

The IRS notice contains additional cost-of-living adjustments for 2024, including a moderate increase in the limit for defined contribution (DC) and defined benefit (DB) plans:

- \$69,000 (up from \$66,000) for DC plans, and
- \$275,000 (currently \$265,000) for DB plans.

For 2024, the annual compensation limit will bump up from the current \$330,000 to \$345,000.

As for SIMPLE retirement accounts, a max of \$16,000 can be made in elective deferrals for 2024 – that's a slight increase from this year's limit of \$15,500.

More updates

Employees age 50 or older who participate in 401(k), 403(b) and 457 plans will be capped at the same

(Please see Retirement plan ... on Page 2)

Planning now for 2024 legal and banking holidays

As we get ready to move into 2024, in addition to planning for the holidays your company will provide to employees, it's worth confirming which days are slated as legal and banking holidays.

That'll help you ensure smooth sailing with your Payroll responsibilities – for example, with tax deposits and paydays. On the federal level, there are 12 dates to mark on your 2024 calendar.

Calendar entries

Here's what the IRS and banks have lined up:

- Mon., Jan. 1: New Year's Day (LB)
- Mon., Jan. 15: MLK Jr. Day (LB)
- Mon., Feb. 19: Presidents' Day (LB)
- Tues., April 16: Emancipation Day (L)
- Mon., May 27: Memorial Day (LB)
- Wed., June 19: Juneteenth (LB)
- Thurs., July 4: Independence Day (LB)
- Mon., Sept. 2: Labor Day (LB)
- Mon., Oct. 14: Columbus Day (LB)
- Mon., Nov. 11: Veterans' Day (LB)
- Thurs., Nov. 28: Thanksgiving (LB)
- Wed., Dec. 25: Christmas Day (LB)

More info: www.irs.gov/forms-pubs/about-publication-509

FLSA violations took place 30 years ago, but higher penalties still applied

■ OWED \$350K IN BACK WAGES,
MORE THAN \$70K IN PENALTIES

When the Dept. of Labor (DOL) did an extensive investigation into a supermarket chain's pay practices, multiple Fair Labor Standards Act (FLSA) violations came to light.

Rosauers Supermarkets Inc., based in Spokane, WA, operated 23 stores. Most of them were in Washington, but some stores were located in Montana, Idaho and Oregon.

The FLSA problems included:

- not paying employees when they took meal breaks lasting less than 20 minutes
- failing to include evening premium pay, hazard pay and nondiscretionary bonuses in the regular pay rates for overtime purposes, and
- letting 16- and 17-year-old minors operate a powered scrap paper

baler and paper box compactor, which are prohibited by the FLSA's child labor provisions.

Staying in compliance

The company had to pay \$350,000 in back wages and liquidated damages for 602 employees.

The DOL also assessed penalties of \$72,862 because the violations were willful. Part of that amount (\$17,820) was for repeat child labor violations, as similar infractions occurred at 10 stores in 1993.

Although the child labor violations dated back 30 years, the higher rate for repeat violations still applied. For companies with a history of violations, there's extra pressure for compliance.

More info: www.dol.gov/newsroom/releases/whd/whd20230803-1

Retirement plan ...

(continued from Page 1)

catch-up contribution limit as they are now: \$7,500. Similarly, there will be no change to the limit on catch-up contributions to SIMPLE plans for these workers. It'll remain \$3,500.

Notice 2023-75 included other updates for 2024, such as the:

- limit for a "key employee" in a top-heavy plan under IRC Sec. 416(i)(1)(A)(i) is going up to \$220,000 (from \$215,000)
- limit for a "highly compensated employee" under IRC Sec. 414(q)(1)(B) will reach \$155,000 (currently, \$150,000)
- compensation amount for a "control employee" for fringe benefit valuation under Income Tax Regulations Sec. 1.61-21(f)(5)(i) will be \$135,000 (now, \$130,000), and
- compensation amount under Sec. 1.61-21(f)(5)(iii) will hit \$275,000 (it's \$265,000 in 2023).

More info: www.irs.gov/pub/irs-drop/n-23-75.pdf

COMPLIANCE CHECK

■ MORE THAN \$70K OWED FOR PREVAILING WAGE PROBLEMS

Pacific Tugboat Service, a subsidiary of Pacific Maritime Group Inc. based in San Diego, failed to pay prevailing wages or provide fringe benefits to 23 employees. The company was contracted by the U.S. Army Corps of Engineers to work on a federally funded construction project. The Dept. of Labor also found overtime problems. For the violations, Pacific Tugboat Service had to pay:

- \$71,367 in prevailing wages, fringe benefits and lodging costs, and
- \$1,624 in damages.

More info: bit.ly/prevailing680

■ PROBLEM WITH HEALTH PLAN PREMIUM SURCHARGE

Flying Food Group, a Chicago food service provider for major airlines, failed to comply with its health plan's governing documents and federal regulations in violation of the Employee Retirement Income Security Act. For example, it imposed a premium surcharge when employees disclosed tobacco use on health benefit enrollment forms. It didn't inform them a reasonable alternative existed to avoid the surcharge. The company must pay:

- \$134,222 to participants, and
- \$13,422 in penalties.

More info: bit.ly/erisa680

■ BROKE FLSA RULES WHEN PAYING 25 WORKERS

LOOPX LLC, an Independence, LA, residential contractor specializing in pool construction, paid 25 workers straight time when overtime was due. The company also misclassified three of the workers as independent contractors.

As a result of the Fair Labor Standards Act (FLSA) violations, LOOPX owed \$56,862 in back wages.

More info: bit.ly/pool680

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Joint-employer status more likely under NLRB's final rule: Here's why

■ THE FOCUS IS ON TERMS AND CONDITIONS OF EMPLOYMENT

The standard for determining who's a joint employer has changed, due to a final rule from the National Labor Relations Board (NLRB).

The NLRB issued the rule in the *Federal Register* on Oct. 27, 2023. It's scheduled to take effect 60 days from that date – that's Dec. 26, 2023.

However, it's classified as a major rule subject to congressional review, so it's not a done deal yet.

The current rule, put in place in 2020 under the Trump Administration, says only the employer with direct and immediate control is liable for violations of the National Labor Relations Act (NLRA).

The new rule rescinds and replaces the old one.

Under the new, Biden-era standard, an entity may be considered a joint employer of another employer's employees if the two share or codetermine the employees' essential terms and conditions of employment.

Regarding the authority to control the essential terms and conditions of employment, it doesn't matter whether or not such control is exercised.

Likewise, it doesn't matter whether or not the control is indirect or direct.

The final rule contains an exhaustive list of what the essential terms and conditions are:

- wages, benefits and other compensation
- hours of work and scheduling
- the assignment of duties to be performed
- the supervision of the performance of duties
- work rules and directions governing the manner, means and methods of the performance of duties and the grounds for discipline
- the tenure of employment, including hiring and discharge, and
- working conditions related to the safety and health of employees.

Required to bargain

In addition to both entities in a joint-employer relationship being liable for NLRA violations, both entities would be required to bargain. But each entity would need to bargain only over the terms and conditions it possesses the authority to control.

More info: [public-inspection.federalregister.gov/2023-23573.pdf](https://www.federalregister.gov/2023-23573.pdf)

Employer sought advisory opinion on its bonus plan

One employer that operated ambulatory surgical centers (ASCs) recently got the green light for its bonus methodology from the Dept. of Health and Human Services Office of Inspector General (OIG).

The OIG issued Advisory Opinion No. 23-07 on Oct. 10, 2023, after the employer explained the details of its bonus arrangement – i.e., employed physicians would be compensated based on net profits derived from certain procedures they performed.

The employer had a multi-specialty physician practice with about

11 physician employees. They'd receive quarterly bonuses for doing outpatient surgical procedures at their ASCs.

Didn't violate statute

The employer had asked the OIG if the arrangement would violate the federal Anti-Kickback Statute. That specific bonus arrangement wouldn't be prohibited remuneration, the OIG said. It'd be protected by the statutory exception and regulatory safe harbor for employees.

More info: [oig.hhs.gov/documents/advisory-opinions/1132/AO-23-07.pdf](https://www.oig.hhs.gov/documents/advisory-opinions/1132/AO-23-07.pdf)

NEWS YOU CAN USE

■ IRS NOTICE 2023-69 COVERS PAID-TIME-OFF DONATIONS

Due to IRS Notice 2023-69, employees can choose to donate their unused vacation, sick or personal leave in exchange for their employers making cash payments to certain charitable organizations. Specifically, the contributions must go to a Sec. 170(c) organization to help victims of the 2023 Hawaii wildfires. The cash payments must be made before Jan. 1, 2025.

Under a program for donating paid time off, cash payments aren't treated as gross income or wages. Therefore, the amounts don't need to be included in boxes 1, 3 or 5 of Forms W-2. Plus, employers may deduct the qualified employer leave-based donation payment.

More info: www.irs.gov/pub/irs-drop/n-23-69.pdf

■ MAILING TAX FORMS TO IRS? SEE NEW ADDRESSES

The IRS has updated the lockbox addresses you'll need in 2024 to mail certain tax returns, such as Form 940, *Employer's Annual Federal Unemployment Tax Return*.

All the details are included in Publication 3891, *Lockbox Addresses for 2024*, revised in September 2023.

More info: www.irs.gov/pub/irs-pdf/p3891.pdf

■ DEFINITION OF FIDUCIARY IMPACTS RETIREMENT PLANS

The definition of *investment advice fiduciary* under the Employee Retirement Income Security Act may be changing due to a proposed rule from the Dept. of Labor.

According to a White House statement on Oct. 31, 2023, the proposed rule will impact the recommendations financial advisers make to plan sponsors regarding which investments to include in employer-sponsored plans.

More info: bit.ly/fiduciary680

Employment tax returns and related forms: IRS asked for comments

■ 51 FORMS AND 38 REGULATIONS INCLUDED IN THE NOTICE

If you'd like to see a few changes to the reporting requirements for federal employment taxes, you're not alone.

In a recent notice, the IRS asked for comments on employment tax returns and related forms. The notice covered a broad range of documents – 51 forms and 38 regulations.

PayrollOrg (formerly the American Payroll Association) decided to submit some suggestions to the IRS.

Here's what the letter said:

Suggestions from PayrollOrg

1. *E-filing returns.* As the letter pointed out, the IRS plans a 2024 expansion of the types of forms that can be filed using Modernized e-File, known as MeF.

The forms of greatest priority, according to PayrollOrg?

- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and
- Form 945-X, *Adjusted Annual*

Return of Withheld Federal Income Tax or Claim for Refund.

2. *Electronic signatures.* While so far, only individual taxpayers and professional tax preparers have been able to utilize electronic signatures, PayrollOrg commented that e-signatures should be allowed on employment tax returns.

After all, the technology is available to ensure security.

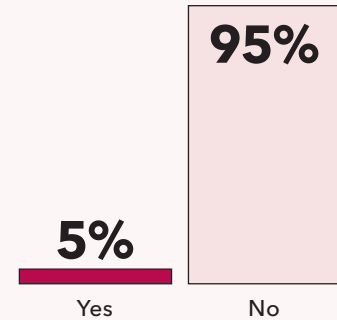
3. *Employer transcripts.* If IRS could post employers' unredacted transcripts in its electronic systems, that'd help both employers and IRS agents, PayrollOrg explained. Some additional ideas were:

- Expand the downloading format for transcripts via the IRS portal to text, comma-separated values or Excel. Those are common formats.
- Identify activity on transcripts by form/return type and version number so activity can be reviewed in order of submission. For example, if an employer files multiple Forms 941-X in a quarter, the order is important for accuracy, and activity on one form may

WHAT PAYROLL PROS TOLD US

Repaying student loans

Do you have access to student loan repayment benefits?



Source: Bureau of Labor Statistics, The Economics Daily, 10/26/23

As of March 2023, 5% of workers had employers offering student loan repayments as a benefit. In 2024, some employers may be reconfiguring this benefit due to the Secure 2.0 Act.

Each issue of KUDP contains an exclusive survey to give Payroll pros insight into what their peers nationwide are thinking and doing.

impact another form, such as with Form 941-X and Form W-2.

- If Congress mandates a new program that IRS implements, indicate on transcripts how payments and credits in the program were applied.

More info: tinyurl.com/taxes680

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Jury awarded damages for FLSA violations, then the employee wanted more

A roofing contractor in Florida faced this real-life scenario:

After an employee brought a Fair Labor Standards Act (FLSA) lawsuit against his employer, a jury awarded the employee damages totaling:

- \$2,700 in unpaid overtime, and
- \$15.14 in unpaid minimum wage.

The legal battle continued when the employee sought liquidated damages – i.e., an additional of \$2,715.14 from his employer.

The company argued that it had acted in good faith.

It provided several examples to try to demonstrate that. They included a

verbal policy against working more than 40 hours in a workweek; GPS records indicating the employee didn't work overtime; and text messages revealing the employee had taken one-hour lunch breaks.

The company didn't act in bad faith, the court said.

Problem was, the company didn't present any evidence that it tried to comply with the FLSA. So, it couldn't prove it acted in good faith.

For example, the company didn't explain how it'd familiarized itself with the law, consulted an attorney or interacted with other employers

in the area before developing its payroll practices.

Therefore, the court concluded, it had to pay liquidated damages.

Checklist for compliance

- Take some time to find out how your payroll practices compare with those of other employers in your industry and geographical area.
- Review your recordkeeping: The FLSA requires that time records contain 12 separate categories of information, such as total hours worked per workday and total hours worked per workweek.

Tracking local laws and regs

■ Post-hurricane tax relief for several Massachusetts counties

The IRS has given 14 counties in Massachusetts extra time to file returns and pay taxes due to Hurricane Lee, which hit parts of the state on Sept. 15, 2023. Employers in the counties have until Feb. 15, 2024, according to the IRS.

The counties are: Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester.

Penalties on payroll and excise tax deposits due on or after Sept. 15, 2023, will be abated if the deposits were made by Oct. 2, 2023.

More info: www.irs.gov/newsroom/tax-relief-in-disaster-situations

■ Some Maine employers have extra time to pay, file taxes

Employers in 16 counties in Maine have been granted tax relief due to the impact of Hurricane Lee

on Sept. 15, 2023. The included counties are: Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington and York.

Employers in those counties have until Feb. 15, 2024, to file returns and pay taxes, the IRS said.

Penalties on payroll and excise tax deposits due on or after Sept. 15, 2023, will be abated if the deposits were made by Oct. 2, 2023.

More info: www.irs.gov/newsroom/tax-relief-in-disaster-situations

■ \$1-per-hour minimum wage increase in Mile High City

Denver is raising its minimum wage rate for 2024.

The current rate of \$17.29 per hour will be going up to \$18.29, according to Denver Labor.

The rate increases each year based on the Consumer Price Index.

More info: denvergov.org

Answers to readers' most pressing Payroll questions

Whether you're a longtime Payroll person or new to the profession, no doubt you occasionally face situations that leave you scratching your head. Here, we answer common dilemmas:

What's the deadline to start using the revamped Form I-9?

Q: What's the deadline that U.S. Citizenship and Immigration Services (USCIS) set for using the revamped Form I-9, *Employment Eligibility Verification*?

A: The deadline was Nov. 1, 2023. So by now, employers should be using the version of Form I-9 that USCIS put into circulation in the summer of 2023. On the new version, you'll notice that Section 1 and Section 2 appear on a single

page. You'll also find the form has two supplements. The first is *Supplement A, Preparer and/or Translator Certification for Section 1*. The second is *Supplement B, Reverification and Rehire (formerly Section 3)*. The list of documents that employers can present to you has also been modified – some acceptable receipts have been added to lists A, B and C. As for the form's instructions, they've been reduced from 15 pages to eight pages.

More info: www.uscis.gov/sites/default/files/document/forms/i-9.pdf

Send questions to jweiss@HRMorning.com. Because of the volume of mail we receive, we regret we can't answer all submissions.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of forms, instructions and other publications contains Payroll-related updates.

- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*. Revision date: April 2023. Posted date: 10/2/23.
- Publication 4485, *Guide for the Certification of State FUTA Credits*. Revision date: September 2023. Posted date: 10/3/23.
- Form W-3C (PR), *Transmittal of Corrected Wage and Tax Statements (Puerto Rico Version)*. Revision date: August 2023. Posted date: 10/3/23.
- Form 941-X (PR), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund (Puerto Rico Version)*. Revision date: April 2023. Posted date: 10/3/23.
- Publication 5108, *Statistics of Income Corporation Income Tax Returns Line Item Estimates 2020*. Revision date: September 2023. Posted date: 10/4/23.
- Publication 4757, *Individual Taxpayer Identification Number*. Revision date: October 2023. Posted date: 10/5/23.
- Form 14039, *Identity Theft Affidavit*. Revision date: September 2023. Posted date: 10/6/23.
- Form 1095-A, *Health Insurance Marketplace Statement*. Revision date: 2023. Posted date: 10/10/23.

The Purpose of *Keep Up to Date on Payroll*

Keep Up to Date on Payroll helps Payroll practitioners stay current with all the changing laws and regs.

The quick-read, easy-to-understand format gets right to the point, so you don't have to waste any time.

Keep Up to Date on Payroll provides timely information about new laws and regs, and gives you a heads-up about coming changes – so you have plenty of time to prepare.

State law and reg changes Payroll needs to know

Don't see your state here? You can find additional state and local items online – it's included with your subscription. Check out our interactive map, too. Log on today!

CALIFORNIA

- **EXEMPT:** The California Dept. of Industrial Relations has released updates on paying certain exempt employees in 2024. For computer software employees, minimum pay will be \$55.58 per hour; \$9,646.96 on a monthly basis; and \$115,763.35 on an annual basis. Licensed physicians and surgeons should be paid a minimum hourly rate of \$101.22. **More info:** www.dir.ca.gov

COLORADO

- **FAMILY, MEDICAL LEAVE:** The definition of *wages* under the Family and Medical Leave Insurance (FAMLI) program has changed for the purpose of calculating premiums. Effective Jan. 1, 2024, the definition will be “gross wages.” **More info:** famli.colorado.gov
- **MINIMUM WAGE:** Employers will need to pay employees at least \$14.42 per hour in 2024. That’s up from \$13.65 in 2023. For employers utilizing the tip credit, the rate next year will be \$11.40 per hour (currently, it’s \$10.63). **More info:** cdle.colorado.gov/dlss

CONNECTICUT

- **MINIMUM WAGE:** In the state’s first-ever economic indicator adjustment, the minimum wage will increase to \$15.69 on Jan. 1, 2024. The current rate of \$15 per hour has been in place only since June 1, 2023. **More info:** portal.ct.gov

ILLINOIS

- **TRANSPORTATION BENEFITS:** HB 2068, which takes effect Jan.

1, 2024, requires certain employers to provide a transportation benefit program. The legislation pertains to employers in Cook County and other specified locations if there are 50 or more employees at an address located within one mile of fixed-route transit services. Under the transportation benefit program, employers will need to offer pre-tax commuter benefits to employees. This will allow employees to use earnings to purchase transit passes via payroll deduction – the costs of which may be excluded from employees’ taxable wages and compensation. The maximum excludable amount is the same as what’s allowed under federal law. The commuter benefit must be offered to employees starting on each employee’s first full pay period after 120 days of employment. **More info:** tinyurl.com/illinois680

MAINE

- **MINIMUM WAGE:** Starting Jan. 1, 2024, the minimum wage will increase to \$14.15 per hour. Currently, the rate is \$13.80. The tip wage will be \$7.08 per hour (up from \$6.90 in 2023). In addition, the salary threshold for who’s exempt from overtime pay is based on the state’s minimum wage. That means the new salary threshold in 2024 will be \$816.35 per week or \$42,450.20 per year. **More info:** www.maine.gov/labor/news_events/article.shtml?id=11887762

NEW JERSEY

- **LABOR LAW:** The New Jersey Dept. of Labor and Workforce Development (NJDOL) has created the WALL – that stands for Workplace Accountability in Labor List. Businesses that fail to satisfy their outstanding liabilities to the state for wage, benefit and tax law violations will be added to the WALL. Examples include unpaid wages due to workers; unemployment insurance

contributions due to the state; or workers’ compensation penalties. A business whose name appears on the WALL will be prohibited from public contracting. The NJDOL says it plans to update the WALL monthly. **More info:** www.nj.gov/labor/ea/osec/wall.shtml

OHIO

- **WITHHOLDING:** The Dept. of Taxation issued new employer withholding tables to be used for payrolls that end on or after Nov. 1, 2023. The tables incorporate the income tax rate reductions put in place by HB 33 earlier in 2023. You’ll find percentage and optional computer methods for calculating withholding as well as daily, weekly, biweekly, semi-monthly and monthly tables. **More info:** tax.ohio.gov/static/ohiotaxalert/archivedalerts/ewt-table-92823.pdf

THE LIGHTER SIDE

You might associate the month of November with Thanksgiving, turkey and having a day or two off from work.

But there are some other holidays involving food and drink being celebrated this month.

They include:

- November 2 - Deviled Eggs Day
- November 2 - International Stout Day
- November 3 - Sandwich Day
- November 10 - Vanilla Cupcake Day
- November 12 - Happy Hour Day
- November 14 - Spicy Guacamole Day
- November 14 - Pickle Day, and
- November 16 - Fast Food Day.

Cite: www.timeanddate.com/holidays/fun